vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3432 OF 1996

Golden Chemicals Ltd.
having its office and factory
at Chromium House, S.V. Road,
Dahisar, Bombay ... Petitioner

V/s.

1. Mohamad Azam Dil
Mohamad Malik, Malik Mansion
Bhandup Complex, Gaiban-Shah
Durga Road, Khinipada, Mulund (E),
Bombay

2. Shri S.N. Kamble
Presiding Officer
First Labour Court
having his office at Meher Traders
Road No.21, Wagle Estate, Thane ... Respondent

Mr.P.K. Rele with Mr.Piyush Shah and Mr.P.N. Anaokar for Petitioner
Mr.T.R. Yadav for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 29, 2006**

ORAL JUDGMENT:

. Mr.Yadav, Advocate appearing for the workman, states that the respondent-workman has taken away the papers from him and therefore, he is unable to assist the Court. Since his appearance continues in the matter, the matter is proceeded with.

2. The Petition has been preferred against Award Part II of the I Labour Court at Thane in Reference

(IDA) No.46 of 1987. The Labour Court has allowed the Reference partly. The respondent-workman has been reinstated by his award with 50% backwages.

3. A chargesheet was issued against the Respondent-workman on 25.12.1985 who was then working as a helper. The charges levelled against the workman included those under clauses 29(1), (11) and (12) of the Standing Orders applicable. In essence, the charge levelled against the respondent was that he was found sleeping on duty by the Security Supervisor. When he awoke the workman and asked for his card, the respondent-workman abused him indecently and indulged in exhibitionism. Filthy and vulgar words were used by the workman during this altercation with the Security Supervisor. These words have been reproduced in the chargesheet and the exact acts of the workman have also been reproduced. An enquiry was instituted against the workman since his reply was not found satisfactory. The Enquiry Officer held that the respondent workman was guilty of the acts of misconduct alleged against him. The Petitioner, considering the past service record of the workman and the fact that he had been found guilty by the Enquiry Officer, dismissed the workman.

4. Being aggrieved by his dismissal from service,

the workman approached the machinery available to him under the Industrial Disputes Act and secured a Reference for adjudication of his dispute regarding reinstatement with continuity of service and full backwages. By award part I dated 28.9.1995, the Labour Court held that there was no procedural defect in the enquiry held against the workman and, therefore, the enquiry was fair and proper. It was further held that the findings of the Enquiry Officer were not perverse; this misconduct having been proved. The parties were directed to lead evidence regarding the propriety of the punishment. On 29.3.1996, the Labour Court by award Part II held that the Petitioner had wrongly dismissed the workman from service. It therefore directed that the workman be reinstated with 50% backwages. The Labour Court held that although the workman was guilty of the misconduct alleged against him, he had indulged in same because he was provoked to do so by the Security Supervisor’s use of indiscreet and objectionable language.

5. A perusal of the impugned award indicates that the Labour Court has erred in granting relief to the workman. The exercise of the powers under section 11A by the Labour Court are restricted to the reappraisal of the evidence and commuting the punishment if it is

shockingly disproportionate. The workman in his defence has stated before the Enquiry Officer that while he was sleeping, the Security Supervisor woke him using indecent language. As a result of this, he was irked and provoked into using filthy abuses and indulging exhibitionism. However, in his reply to the chargesheet, he has also stated that the entire charge against him was concocted as he had joined a particular union. The workman then tried to justify his conduct by stating that had the Security Supervisor not provoked him, he would not have indulged in this indecent behaviour. The Labour Court was impressed with this submission made on behalf of the workman. It was also impressed by the fact that the Security Supervisor was not the workman's superior and it was only the Shift Supervisor who could question the workman for being asleep while on duty. The Labour Court took the view that the entire incident would not have occurred if the Shift Supervisor who was his immediate superior and not the Security Supervisor had questioned the workman. All these considerations of the Labour Court are based on mere surmises and conjectures. It is true that no superior officer has the authority to either abuse or use indecent language against any workman. However, such a conduct from a superior officer cannot give a licence to a workman to behave in the manner as the

workman herein has behaved. Decency must be maintained by both the managerial and administrative staff on the one hand and the workers on the other. Neither can be heard to say that it was because the other provoked him, that he behaved indecently or used abusive language. Discipline and good behaviour must be observed by both the workers and their superiors so that a work environment conducive to efficient working can be maintained. Neither the workman nor the managerial or supervisory cadre can be permitted to take law into their own hands and abuse or assault the other, giving vent to their grievance about the use of abusive language. In fact if a workman who is employed in an establishment to which the Model Standing orders are applicable has a grievance regarding assault or abuse by a person is a supervisory position, the employer is bound to enquire into such acts complained of by the workman under Standing Order 28.

6. Besides this, the Labour Court was in error in allowing the Reference since the past service record of the workman left much to be desired. The workman admittedly was working as a temporary helper from 1979. During his past service between 1979 and 1986, the workman had indulged in the following acts of misconduct for which he had been warned and issued show-cause

notices:

22.8.81	Warning dated 4.9.81 for being away from the place of work in terms of show cause.
21.10.81	Warned for being away from the place of work in terms of memo dated 5.11.81 for which show cause was issued.
19.12.83	Show cause issued for late attendance for which letter was warned.
12.3.83	Warning dated 22.3.83 for disobeying lawful and reasonable order of the superiors for which show cause was issued.
26.7.83	Warned for sleeping while on duty and show cause being issued.
31.5.84	Warned for remaining absent for which show cause was issued.
9.7.85 & 3.8.85	Show cause notices issued for sleeping while on duty.

7. The Labour Court while considering his past service record which was produced before him has held that late attendance and sleeping on duty were not misconducts which should warrant dismissal from service. According to the Labour Court, in fact the Petitioner did not consider sleeping on duty to be a serious misconduct and had therefore not taken any action against the workman. This reasoning of the Labour Court is unsustainable. If the Petitioner had condoned such acts in the past it would not necessarily mean that it

was bound to do so each time the workman was found sleeping on duty. Besides, the fact that the workman was found sleeping on duty, which is a misconduct, the other misconduct which the workman indulged in using indecent and abusive language and displaying indecent behaviour compounded the earlier misconducts committed by him.

8. In the case of *Bharat Forge Co. Ltd. v/s. Utam Manohar Nakate*, **2005 I CLR 533**, the Supreme Court held in para 31 of its judgment thus:

> 31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

9. In this view of the matter, the Labour Court was in error in granting reinstatement with 50% backwages. The misconduct that the workman had committed was certainly grave and warranted the punishment imposed on him by the Petitioner.

10. Rule made absolute. No order as to costs.